
Finance Committee

HB 2828

Brief Description: Providing a business and occupation credit for employers who rehire returning active duty national guard members.

Sponsors: Representatives Morrell, Kilmer, Roach, Green, Priest, Morris, Haigh, P. Sullivan, Simpson, Moeller, Linville, Upthegrove, Orcutt, Kessler, Appleton, McCoy, McDonald, Springer, Ericks and McCune.

Brief Summary of Bill

- Allows small businesses that reemploy National Guard members returning from active duty to earn a credit against Business and Occupation tax liability of \$1,000 per member reemployed for at least one year.

Hearing Date: 1/24/06

Staff: Mark Matteson (786-7145).

Background:

Business and Occupation tax. Washington's major business tax is the Business and Occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. The tax is imposed on the gross receipts from all business activities conducted within the state. Revenues are deposited in the State General Fund. A business may have more than one B&O tax rate, depending on the types of activities conducted. Retailing activities, for example, are taxed at a 0.471 percent rate, while general services are taxed at a 1.5 percent rate.

The B&O tax does not permit deductions for the costs of doing business, such as payments for raw materials and wages of employees. Nonetheless, there are many exemptions for specific types of business activities and certain deductions and credits permitted under the B&O tax statutes.

National Guard and employer obligations. Many persons who serve in the National Guard and are called up to active military duty must suspend employment temporarily. The employment rights of returning active duty personnel are covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), enacted by Congress 1994, replacing the Veterans Reemployment Rights Act (VRR) of 1940. According to the Department of Defense, USERRA seeks to ensure that members of the uniformed services, including Reserves and National Guard personnel, are entitled to return to their civilian employment upon completion of their service. Employers are required to reinstate returning members with the seniority, status, and rate of pay

they would have obtained had they remained continuously employed by their civilian employer. The law also protects individuals from discrimination in hiring, promotion, and retention on the basis of present and future membership in the armed services.

The USERRA applies to all employers in the United States, regardless of the size of their business. It protects part-time positions, unless the employment is for a brief, non-recurring period and is not expected to last indefinitely or for a significant period. USERRA does not protect independent contractors and others considered to be self-employed.

The USERRA provides very limited and specific exceptions to reemployment requirements. If an employer's circumstances have changed so much such that reemployment of the returning active duty member would be impossible or unreasonable, the employer is not required to reemploy the person. In addition, an employer is also exempt if he or she is not able to accommodate a returning employee with a service-connected disability, without incurring such difficulty or expense such that an undue hardship would arise. The employer bears the burden of demonstrating the unreasonableness or difficulty of such circumstances.

In an analysis of the effects of reservist (including National Guard members) call-ups on civilian employers issued in May 2005, the Congressional Budget Office found that small firms are more likely to experience financial difficulties than larger firms, since the ability of small firms to shift workload in a reservist's absence tends to be more limited.

Summary of Bill:

Eligible businesses are eligible to earn a credit against B&O tax liability for rehiring qualified persons. The credit is equal to \$1,000 per year per person rehired and reemployed for at least one year. The credit is earned for the calendar year following rehiring, and may be carried over until used.

Eligible businesses are businesses that have 50 or fewer employees; that file tax returns electronically with the Department of Revenue, and that rehire a returning active duty National Guard member to a position that is equal to or better than the one held by the member prior to the active duty, and that continues to employ the returned member for 365 consecutive days. A qualified person is someone who was employed at an eligible business prior to active duty and who is rehired into an equal or better position by the business immediately after the conclusion of active duty.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2006.